IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No.78 of 2007.

Date of decision: 6.11.2007

Sh.Mulkh Raj ....Appellant

-Versus-

Municipal Council, Dalhousie and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Appellant: Mr.Ashwani Sharma, Advocate.

For the respondents: Mr.Adarsh K.Vashishta, counsel for respondent No.1.
Mr.R.M.Bisht, Dy.A.G. for respondents No.2&3.

Deepak Gupta, J.(Oral)

This Letters Patent Appeal is directed against the judgment of the learned Single Judge of this Court dated 12.6.2007 passed in CWP No.684 of 2002.

Briefly stated the facts of the case are that the appellant herein (hereafter referred to as petitioner) belongs to the weaker Section of Society. He is also an handicapped person. He was allotted 0-0-30 hectares i.e. 30 sq.mts. of land in the area of Municipal Council, Dalhousie. He was also granted Rs.5000/- aid to raise construction thereupon. Admittedly after this land was allotted in favour of the petitioner he applied for permission to raise construction on the said land and this permission was granted to him vide sanction order dated 19th December, 1992

issued by the Administrator, Municipal Council, Dalhousie. According to the petitioner he raised the construction strictly in accordance with the sanctioned plan.

On the other hand the case of the Municipal Council is that after raising the construction as per the sanctioned plan the petitioner has encroached upon 0-1-68 hectares of Government land in khasra No.2198/1390/1 and has raised construction in a substantial portion of the said land. According to the Municipal Council this construction is totally illegal and is liable to be demolished.

We have perused the notices issued to the petitioner by the Municipal Council. None of these notices makes any reference to the petitioner having encroached upon the Government land. The only allegation made in the notices is that the petitioner is raising a brick masonry construction in middle Bakrota above MES Pipe Line Road, Dalhousie without getting prior permission. There is no allegation in the notice that the construction is being raised on Government land.

The Municipal Council, Dalhousie passed demolition order against the petitioner on the basis of the aforesaid notice on 17th July, 2001. This order also does not show that the Municipal Council, Dalhousie took into consideration the factors now being pleaded in the reply. The appeal filed by the petitioner was dismissed and the writ petition was also dismissed.

Both the learned District Judge who heard the appeal as well as learned Single Judge who heard the writ petition have not gone into this aspect of the matter as to whether the notices were legal and valid. As already mentioned above the notices are totally silent with regard to the encroachment. In this case, admittedly, the petitioner had a sanctioned plan and had raised some construction as per the sanctioned plan. Before demolition notices could have been issued or demolition could have been ordered the Municipal Council was duty bound to identify that portion of the building which was not in accordance with the sanctioned plan and also to identify the land which had been encroached upon. It was only after such

specific notice was given that the petitioner would be in a position to reply that notice.

In view of the above discussion, we quash and set-aside the judgment of the learned Single Judge, order of the District Judge as well as order dated 17th July, 2001 passed by the Executive Officer, Municipal Council, Dalhousie.

However, we are clearly of the view that no party can be allowed to encroach upon the Government land and to indulge in illegal/unauthorized construction. Therefore, liberty is reserved to the Municipal Council, Dalhousie to take appropriate action in accordance with law. We direct that the Municipal Council shall get the area on which the construction has been raised by the petitioner demarcated on or before 28th of February, 2008. The demarcation shall be carried out by Naib Tehsildar, Dalhousie. Notice of demarcation would be issued to the petitioner by registered post at the address given in this appeal. The dispatch of this notice will be sufficient proof of the fact that the petitioner is aware of the notice. The petitioner can even himself make inquiries from the Naib Tehsildar, Dalhousie as well as the Municipal Council, Dalhousie with regard to the date of demarcation. After the demarcation is conducted the Municipal Council shall, if it is found that the petitioner has encroached upon the Government land and raised unauthorized construction, issue appropriate notice by 31st March, 2008. The petitioner shall reply to the said notice latest by 15th April, 2008 and decision thereupon be taken by the Municipal Council by 15th May, 2008.

The appeal is disposed of in the aforesaid terms. No costs.

(Deepak Gupta),
Judge

November 6, 2007 **(V.K. Ahuja)**
PV **Judge**